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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

YVONNE WESTERFIELD aka YVONNE
LEACH,

Plaintiff(s),

vs.

STATE FARM FIRE AND CASUALTY
COMPANY,

Defendant(s).

CASE NO.: 6:13-cv-678

COMPLAINT

Breach of Contract
Financial Abuse of Disabled Person

JURY TRIAL REQUESTED

CASE SUMMATION

1. This is a Breach of Contract claim stemming from State Farm's failure to pay the full value of a covered loss to Yvonne Westerfield's insured property.

JURISDICTION AND VENUE

2. State Farm Fire and Casualty Company (herein Defendant) is a Illinois corporation with it's principal place of business located at One State Farm Plaza, Bloomington, IL 61710-0001.

COMPLAINT

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3. Defendant is licensed to do business in the state of Oregon, and subject to the laws of Oregon.
4. Yvonne Westerfield (herein Plaintiff) is an individual, and the owner of the real property located at 938 Calapooia St. SW, Albany, OR 97321.
5. The acts, errors and omissions that form the basis for these claim(s) for relief occurred in Oregon in Linn County.
6. The amount in controversy in this case is over \$75,000.
7. Jurisdiction is proper in this Court under 28 USC 1332, Venue is proper in the Eugene District.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

8. On or about May 6, 2011 (herein Date of Loss); Plaintiff's home was damaged by a backup of water and/or sewage.
9. Before Date of Loss, Plaintiff purchased a homeowners insurance policy, specifically identified as policy 37-C2-6331-4 (herein the Policy), from Defendant.
10. The Policy was valid and in effect on the Date of Loss.
11. The Policy provided Coverage in the following amounts:
 - a. \$176,900 – Dwelling, with additional coverage(s) for \$17,690 and \$35,380 if needed.
 - b. \$132,675 – Personal Property.
 - c. \$88,450.00 – Ordinance and Law.
 - d. Unlimited – Additional Living Expenses

12. Plaintiff filed claim for the loss, Defendant assigned the Claim Number 37-J171-122

(herein The Claim)

13. Plaintiff complied with all terms of the policy, performed all acts required of her under the Policy and otherwise fulfilled all obligations under the policy.

14. Defendant accepted the Claim and made payments under several coverage provisions to Plaintiff.

15. Plaintiff is entitled to prejudgment interest at the rate of 9% per annum on the amount of judgment from November 3rd 2011 until the date judgment is entered herein.

16. Plaintiff has been required to retain the services of an attorney to represent her in this matter. Plaintiff is entitled to recover her reasonable attorney fees incurred herein under ORS 742.061.

BREACH OF CONTRACT

17. Plaintiff and Defendant had a contract for insurance.

18. Defendant breached the contract by failing and refusing to pay for the loss under the contract.

19. Defendant breached the contract for insurance in one or more of the following ways:

- a. Failure to properly value the loss.
- b. Failure to pay the full value of the loss.
- c. Failure to properly apply policy coverage provisions resulting in coverage denial.

20. Plaintiff is entitled to prejudgment interest at the rate of 9% per annum on the amount of judgment from November 3rd 2011 until the date judgment is entered herein.

21. Plaintiff has been required to retain the services of an attorney to represent her in this matter. Plaintiff is entitled to recover her reasonable attorney fees incurred herein under ORS 742.061.

BREACH OF CONTRACT:

VIOLATION(S) OF THE DUTY OF GOOD FAITH AND FAIR DEALING

22. Plaintiff and Defendant had a contract for insurance.

23. This contract was and is subject to the implied statutory duty of good faith and fair dealings.

24. Defendant failed and refused to honor the contract in good faith in one or more of the following ways:

- a. Failure to investigate the loss.
- b. Failure to cooperate in the investigation and valuation of the loss.
- c. Misrepresenting the character of coverage to avoid payment.
- d. Offering the Plaintiff less than the loss was worth.
- e. Refusing to pay additional living expenses, thereby forcing Plaintiff into financial distress.
- f. Delaying payment in an effort to cause plaintiff to lose the full value of the contract.
- g. Refusing to cooperate in the investigation, valuation and analysis of the loss in good faith.
- h. Misrepresenting coverage in an attempt to pay less than the full coverage owed under the policy.

25. Plaintiff is entitled to prejudgment interest at the rate of 9% per annum on the amount of judgment from November 3rd 2011 until the date judgment is entered herein.

26. Plaintiff has been required to retain the services of an attorney to represent her in this matter. Plaintiff is entitled to recover her reasonable attorney fees incurred herein under ORS 742.061.

BREACH OF CONTRACT

VIOLATIONS OF THE UNFAIR CLAIMS SETTLEMENT PROVISIONS OF ORS 746.230

27. Plaintiff and Defendant had a contract for insurance.

28. The contract is subject to the Provisions of ORS 746.230.

29. Defendant violated one or more of the following provisions of ORS 746.230 in the settlement of this loss:

- a. Misrepresenting facts or policy provisions in settling claims;
- b. Failing to acknowledge and act promptly upon communications relating to claims;
- c. Failing to adopt and implement reasonable standards for the prompt investigation of claims;
- d. Refusing to pay claims without conducting a reasonable investigation based on all available information;
- e. Failing to affirm or deny coverage of claims within a reasonable time after completed proof of loss statements have been submitted;
- f. Not attempting, in good faith, to promptly and equitably settle claims in which liability has become reasonably clear;
- g. Compelling claimants to initiate litigation to recover amounts due by offering

substantially less than amounts ultimately recovered in actions brought by such claimants;

- h. Attempting to settle claims for less than the amount to which a reasonable person would believe a reasonable person was entitled after referring to written or printed advertising material accompanying or made part of an application;
 - i. Failing to promptly settle claims under one coverage of a policy where liability has become reasonably clear in order to influence settlements under other overages of the policy; or
 - j. Failing to promptly provide the proper explanation of the basis relied on in the insurance policy in relation to the facts or applicable law for the denial of a claim.
30. Plaintiff is entitled to prejudgment interest at the rate of 9% per annum on the amount of judgment from November 3rd 2011 until the date judgment is entered herein.
31. Plaintiff has been required to retain the services of an attorney to represent her in this matter. Plaintiff is entitled to recover her reasonable attorney fees incurred herein under ORS 742.061.

FINANCIAL ABUSE OF A VENUERABLE PERSON

32. Plaintiff is a vulnerable person as defined by ORS 124.100(e)(D).
33. Plaintiff has repeatedly requested Defendant provide her with insurance funds.
34. Without good cause, Defendant continues to hold the money and fails to take reasonable steps to make the money or property readily available to Plaintiff.

35. Defendant has acted and is acting in bad faith, and knows or should have known of the right of the Plaintiff person to have the money transferred as requested or otherwise made available to the Plaintiff person
36. Plaintiff has suffered deprivation of property and economic damages in an amount to be determined at trial, resulting from the above in an amount not to exceed three times \$500,000 or \$1,500,000 total.
37. Plaintiff should recover prejudgment interest at the rate of 9% per annum.
38. Plaintiff has been required to hire the services of an attorney, and should be awarded her reasonable attorney's fees incurred herein pursuant to ORS 124.100.

WHEREFORE Plaintiff prays for relief in the following amounts:

- a. Economic Damages in an amount to be ascertained at trial, but not to exceed \$500,000.00,
- b. Statutory Damages in an amount not to exceed \$1,500,000.00,
- c. Costs,
- d. Reasonable attorney's fees pursuant to ORS 742.061 and/or ORS 124.100,
- e. Pre-judgment interest at the rate of 9% per annum,
- f. Any other such relief the Court deems appropriate.

DATED: 4/22/13

/S/ Clinton L. Tapper

Clinton L. Tapper
R. Scott Taylor
Of Attorneys for Plaintiff